

### **REMARKS**

This responds to the Office Action mailed on March 31, 2006.

No amendments, cancellations, or additions are made to the claims. As a result, claims 1-6 and 34-40 are now pending in this application.

For the convenience of the Examiner, Applicant's remarks concerning the claims will be presented in the same order in which the Examiner presented them in the Office Action.

### **IN THE DRAWINGS**

The drawings were objected to under 37 CFR §1.83(a). The Examiner stated that the claimed "out-of-band transmitter" of claims 3 and 34 must be shown or the feature(s) canceled from the claim(s).

Applicant respectfully points out that the optional "out-of-band transmitter" already appears in FIG. 2, as amended by Applicant's "Amendment & Response Under 37 C.F.R. §1.111" filed on March 30, 2005.

Accordingly, Applicant respectfully requests that the Examiner withdraw the objection to the drawings.

### **Request for Revised Form PTO-892**

Applicant notes that the Examiner cited two documents, Patsiokas (U.S. 6,493,546) and Lehtonen (U.S. 2001/0049262) in rejections to the claims. However, neither of these documents is listed on the Form PTO-892. Applicant respectfully requests that the Examiner prepare and mail a revised Form PTO-892, listing said documents, with the next communication.

**Rejection of Claims 1, 4-6, and 37-40**  
**under 35 U.S.C. §102(e)**  
**as Clearly Anticipated by Patsiokas**

Claims 1, 4-6, and 37-40 were rejected under 35 U.S.C. §102(e) as being clearly anticipated by Patsiokas (U.S. 6,493,546). Applicant does not admit that Patsiokas is prior art and reserves the right to swear behind Patsiokas as provided for under 37 C.F.R. §1.131.

The rule under 35 U.S.C. §102 is well settled that “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2D 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). MPEP §2131.

Patsiokas fails to disclose all of the structural elements recited in independent claims 1 and 37. For example, Patsiokas fails to disclose a geoposition source coupled to a stored program digital computer to provide a geoposition to the stored program digital computer. In Patsiokas, the starting point of the scanning receiver 58 (FIG. 3) is selected randomly and is not based on a geoposition provided by a geoposition source. Additionally, in Patsiokas, the scanning receiver 58 continuously monitors the RF spectrum of the geographic area in which the vehicle is located (see Abstract and col. 4, lines 48-51). Patsiokas does not contain a database of optimum carrier frequencies arranged by geoposition (as recited in Applicant’s claim 1) or a database of available carrier frequencies arranged by geoposition (as recited in Applicant’s claim 37).

For the above reasons, independent claims 1 and 37 should be found to be allowable over Patsiokas, and Applicant respectfully request that the rejection of claims 1 and 37 under 35 U.S.C. §102(b) as clearly anticipated by Patsiokas be withdrawn.

Claims 4-6, which depend from claim 1 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

Claims 38-40, which depend from claim 37 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Rejection of Claims 3 and 34-36**  
**under 35 U.S.C. §103(a) as Unpatentable**  
**over Patsiokas in view of Lehtonen**

Claims 3 and 34-36 were rejected under 35 U.S.C. §103(a) as being unpatentable over Patsiokas in view of Lehtonen (U.S. 2001/0049262).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, the prior art reference (or references when combined) must teach or suggest every limitation of the claim. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA, 1974). MPEP §2143.

The asserted combination of Patsiokas in view of Lehtonen fails to teach or suggest all of the claim limitations present in independent claims 1 and 34, so a *prima facie* case of obviousness has not been established.

Neither Patsiokas nor Lehtonen disclose all of the structural elements recited in dependent claim 3 or in independent claim 34. For example, neither Patsiokas nor Lehtonen disclose an out-of-band transmitter to transmit a channel selection comprising an optimum carrier frequency (as recited in Applicant's claim 3) or an available carrier frequency (as recited in Applicant's claim 34).

For the above reasons, dependent claim 3 and independent claim 34 should be found to be allowable over any combination of Patsiokas and Lehtonen, and Applicant respectfully requests that the rejection of dependent claim 3 and independent claim 34 under 35 U.S.C. §103(a) as unpatentable over Patsiokas in view of Lehtonen be withdrawn.

Claims 35-36, which depend from independent claim 34 and incorporate all of the limitations therein, are also asserted to be allowable for the reasons presented above.

**Additional Elements and Limitations**

Applicant considers additional elements and limitations of claims 1-6 and 34-40 to further distinguish over the cited references, and Applicant reserves the right to present arguments to this effect at a later date.

**Conclusion**

Applicant respectfully submits that claims 1-6 and 34-40 are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's below-signed attorney (located in Phoenix, Arizona) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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